

1 Arthur A. Hartinger (SBN: 121521)  
ahartinger@meyersnave.com  
2 Geoffrey Spellberg (SBN: 121079)  
gspellberg@meyersnave.com  
3 Linda M. Ross (SBN: 133874)  
lross@meyersnave.com  
4 Jennifer L. Nock (SBN: 160663)  
jnock@meyersnave.com  
5 Michael C. Hughes (SBN: 215694)  
mhughes@meyersnave.com  
6 MEYERS, NAVE, RIBACK, SILVER & WILSON  
555 12<sup>th</sup> Street, Suite 1500  
7 Oakland, California 94607  
Telephone: (510) 808-2000  
8 Facsimile: (510) 444-1108

9 Attorneys for Plaintiff  
City of San Jose

10 **IN THE SUPERIOR COURT FOR THE**  
11 **COUNTY OF SANTA CLARA**

12 SAN JOSE POLICE OFFICERS  
ASSOCIATION,

13 Plaintiff,

14 v.

15 CITY OF SAN JOSE, BOARD OF  
16 ADMINISTRATION FOR POLICE AND  
FIRE RETIREMENT PLAN OF CITY OF  
17 SAN JOSE, and DOES 1-10 inclusive,

18 Defendants.

19 AND RELATED CROSS-COMPLAINT  
20 AND CONSOLIDATED ACTIONS  
21

Case No. 1-12-CV-225926

[Consolidated with Case Nos. 112CV225928,  
112CV226570, 112CV226574, 112CV227864]

**DEFENDANT CITY OF SAN JOSE'S  
MOTIONS IN LIMINE**

Date; July 12, 2013  
Time: 9:00 a.m.  
Dept.: 2

Complaint Filed: June 6, 2012  
Trial Date: July 22, 2013

**BY FAX**

Case No. 1-12-CV-225926

CITY OF SAN JOSE'S MOTIONS IN LIMINE

1 **I. Introduction**

2 This is a vested rights challenge to San Jose's Measure B – a pension reform measure  
3 adopted by the voters in the June 2012 election. A copy of Measure B is attached to the  
4 Declaration of Arthur A. Hartinger as Exhibit 1.<sup>1</sup>

5 The parties have exchanged witness and exhibit lists pursuant to the Stipulation and Order  
6 Regarding Pretrial and Trial Schedule ("Pretrial Order"), endorsed filed dated April 24, 2013.  
7 Pursuant to the Pretrial Order, the City now submits these motions in limine relating to the trial set  
8 for July 22, 2013.

9 **II. Summary of Motions in Limine**

10 The City makes the following motions in limine:

- 11 1. The City moves to exclude evidence, testimony and argument about the City's  
12 retirement contribution costs approximating \$650 million.
- 13 2. The City moves to exclude evidence, testimony and arguments about various legal  
14 opinions regarding the City's retirement and post employment benefit obligations,  
15 including:
  - 16 a. the February 2008 legal opinion from the law firm of Jones Day;
  - 17 b. the opinions of Susan Devencenzi, a former Deputy City Attorney;
  - 18 c. legal opinions by Saltzman & Johnson.
- 19 3. Susan Devencenzi, a former Deputy City Attorney, should be precluded from  
20 testifying given her involvement as an attorney providing legal advice to the City  
21 and the retirement boards.
- 22 4. The City moves to exclude evidence, testimony and argument about the March 4,  
23 2008 Memorandum from Deborah Figone regarding retiree health benefits.
- 24 5. The City moves to exclude evidence, testimony and argument about various  
25 collateral challenges relating to Measure B, including administrative actions  
26 pending before the Public Employment Relations Board ("PERB"), grievances and  
27 the SJPOA's *Quo Warranto* challenge.

---

28 <sup>1</sup> All exhibits referenced are attached to the accompanying Declaration of Arthur Hartinger.

1           6.     The City moves to preclude plaintiffs from proffering testimony in the cases where  
2           plaintiffs have been instructed not to answer basic questions about their claims.  
3           This motion would preclude plaintiffs from proffering oral testimony from  
4           plaintiffs in the following cases:

- 5           a.     *Robert Sapien, et al. vs. City of San Jose*, Santa Clara County Superior  
6           Court Case No. 112CV-225928 (based on Mr. Sapien's refusal to answer  
7           questions);  
8           b.     *John Mukhar, et al vs. City of San Jose*, Santa Clara County Superior Court  
9           Case No. 112CV-226574 (based on Mr. Mukhar's refusal to answer  
10          questions);  
11          c.     *Teresa Harris, et al. vs. City of San Jose*, Santa Clara County Superior  
12          Court Case No. 112CV-226570) (based on Ms. Harris's refusal to answer  
13          questions);  
14          d.     *AFSCME, Local 101 vs. City of San Jose*, Santa Clara County Superior  
15          Court Case No. 112CV-227864 (based on the designated Person Most  
16          Knowledgeable – Charles Allen – refusal to answer questions).

17          7.     The City moves to preclude plaintiffs from proffering testimony that constitutes  
18          legal conclusions or opinions – e.g., that Measure B “breaches a contract” or  
19          “violates vested rights,” etc. Testimony from plaintiffs’ witnesses should be  
20          limited to the facts upon which each respective witness has personal knowledge.

21          8.     Numerous proposed trial exhibits designated by plaintiffs in the *Harris, Sapien* and  
22          *Mukhar* must be excluded due to lack of a sufficient evidentiary foundation.

23          9.     A CNN video clip of Councilmember Liccardo, proffered by the *Sapien* plaintiffs,  
24          should be excluded and all reference to that video clip excluded.

25          10.    Except for parties, all witnesses must be excluded until such witnesses have  
26          concluded their testimony.

27          11.    The City moves for an order regulating case presentations by equal time  
28          limitations. For example, plaintiffs would have 12 hours to present their case;  
29          defendants would have 12 hours to present their case.

30          12.    The City objects to, and moves to exclude proffered declarations by the plaintiffs  
31          on the grounds they constitute hearsay.

### 32    III.    ARGUMENT

33           **Motion in Limine No. 1:** The City moves to exclude evidence, testimony and argument  
34           regarding the City's retirement contribution costs approximating \$650 million, including the State  
35

1 Auditor Report.

2           **Facts:** The City and Mayor Reed were previously accused of exaggerating an  
3 unfunded liability projection related to the pensions plans of \$650 million. (See the CBS web  
4 print out, attached as Exhibit 2.) The unions filed complaints with the City's election commission,  
5 and otherwise attempted to exploit the issue in the news media. The California State Auditor  
6 issued a report in August 2012, agreeing that the City's costs for pension benefits were increasing  
7 at an alarming rate, but also explaining the chronology of the \$650 million estimate and the  
8 downward adjustment after the retirement boards adopted certain "actuarial assumptions."  
9 (Exhibit 3.) The Sapien Plaintiffs seek to offer this audit report at Exhibit 27.<sup>2</sup> Mayor Reed's  
10 initial response to the State Auditor report is attached as Exhibit 4.

11           **Argument:** All of this evidence should be excluded. It is irrelevant. Cal. Ev. Code  
12 § 350. It constitutes hearsay without an exception. Cal. Ev. Code § 1200, *et seq.* It is replete with  
13 inadmissible opinion. Further, even assuming the evidence had some marginal relevance – which  
14 it does not – it would require an undue consumption of time and should therefore be excluded in  
15 any event pursuant to California Evidence Code section 352.

16           The issue for the Court is determining the constitutionality and enforceability of Measure  
17 B, not whether the Mayor provided allegedly inaccurate information to the public or the media.  
18 Any testimony, evidence or argument about public comments made by the Mayor (or any other  
19 Councilmember) in support of Measure B are irrelevant, not probative and unduly time  
20 consuming. The State Audit (*Sapien* Plaintiffs, Ex. 27), its conclusions and the entire "\$650  
21 million issue," must be excluded.

22           **Motion in Limine No. 2:** The City moves to exclude evidence, testimony and arguments  
23 about various legal opinions regarding the City's retirement and post employment benefit  
24 obligations.

25 \_\_\_\_\_  
26 <sup>2</sup> A true and correct copy of the *Sapien* exhibit list is attached as Exhibit 10 to the Hartinger  
27 Declaration.

1                   **Facts:** The record contains various legal opinions, some of which plaintiffs seek to  
2 introduce into evidence. For example, in 2008, the Jones Day firm issued a legal opinion  
3 concerning the City's retiree medical program. The opinion explored a variety of employment and  
4 pension issues, and opined about the "vested" nature of certain benefits.

5                   In addition, Susan Devencenzi, a former Deputy City Attorney, offered a variety of  
6 opinions in her capacity as counsel to the retirement boards. For example, Devencenzi advised  
7 that the City Council could authorize negotiations with the City's labor unions to change the  
8 allocation of contribution rates between members and the City. A number of her legal memoranda  
9 that she prepared as a Deputy City Attorney are being offered. (See Exhibits 8, 11 and 12 by  
10 plaintiff SJPOA and by the *Sapien* Plaintiffs at Exhibit No. 24.) Finally, the firm Salzman and  
11 Johnson, in 1997 and again in early 1998, provided legal opinions to the retirement boards about  
12 various issues, including contribution rates and the allocation of actuarial surpluses. Plaintiffs  
13 apparently seek to offer and rely upon these old opinions at trial. The SJPOA offers the Salzman  
14 and Johnson opinions at Exhibit Nos. 7 and 13.<sup>3</sup>

15                   **Argument:** Legal opinions, and any argument, discussion or evidence about them,  
16 must be excluded. It is the Court's duty to opine on the legality of Measure B, and thus third  
17 party opinions are irrelevant. Further, any discussion and argument about earlier legal opinions  
18 will result in an unnecessary consumption of trial time. Under section 352, all legal opinions must  
19 be excluded.

20                   **Motion in Limine No. 3:** Susan Devencenzi, a former Deputy City Attorney, should be  
21 precluded from testifying given her involvement as an attorney providing legal advice to the City  
22 and the retirement boards.

23                   **Facts:** Susan Devencenzi is a former Deputy City Attorney who, among other  
24 duties, represented and provided legal advice to the City and its retirement boards. Again, a  
25 \_\_\_\_\_

26 <sup>3</sup> A true and correct copy of the *SJPOA* exhibit list is attached as Exhibit 9 to the Hartinger  
27 Declaration.  
28

1 number of her legal memoranda that she prepared as a Deputy City Attorney are being offered.  
2 (See Exhibits 8, 11 and 12 by plaintiff SJPOA and by the *Sapien* Plaintiffs at Exhibit No. 24.)

3 Plaintiffs may seek to have Susan Devencenzi testify at trial. As stated above, she is the  
4 author of various legal opinions, and she served as a Senior Deputy City Attorney providing  
5 attorney client privileged advice to the City and its retirement boards.

6 **Argument:** The City believes there is an agreement that Ms. Devencenzi will not  
7 testify, in that the Retiree Association did not make her available for a deposition and agreed that  
8 it would not call her as a witness. (Hartinger Dec., ¶ 4.) Given that she has acted as attorney for  
9 the City, the City remains concerned about the possibility of another party calling her. The City  
10 seeks an order confirming she will not testify.

11 The attorney client privilege belongs to the client and cannot be unilaterally waived by the  
12 attorney. Cal. Ev. Code § 953. Here, all communications that Ms. Devencenzi had with her client  
13 the City of San Jose are presumptively privileged. Pursuant to Evidence Code section 954, the  
14 City can prevent Ms. Devencenzi from disclosing any confidential communication or information  
15 that she received as a Deputy City Attorney.

16 It is very unlikely that Ms. Devencenzi would be called to testify about information  
17 unrelated to her duties as a Deputy City Attorney, and she must therefore be excluded from giving  
18 any testimony at all in this trial.<sup>4</sup>

19 **Motion in Limine No. 4:** The City moves to exclude evidence, testimony and argument  
20 about the March 4, 2008 Memorandum from Deborah Figone.

21 **Facts:** In March 2008, Debra Figone prepared and sent a memorandum offered as  
22 Exhibit 20 by the *Sapien* Plaintiffs. (See Exhibit 5.) The purpose of the Memorandum was to  
23

---

24 <sup>4</sup> To the extent plaintiffs assert that this witness would testify about non-privileged issues,  
25 plaintiffs should be ordered to make an offer of proof before Ms. Devencenzi is permitted to take  
26 the witness stand. Defendant notes that because these motions in limine were required to be filed  
27 before the deposition of this witness, there may be more clarity about the anticipated testimony at  
28 the time that this motion is argued.

1 advise current and former employees as to the status of the City's efforts to control the burgeoning  
2 retiree healthcare costs. In the Memorandum at page 2, Ms. Figone stated:

3 In San Jose, retiree healthcare benefits are in the Municipal Code as part of the  
4 City's retirement plans. Because San Jose's retiree healthcare benefits are part of  
5 the City's retirement plans, the retiree healthcare benefit can be considered a  
"vested" benefit similar to the pension benefit itself.

6 Plaintiffs will apparently argue that these comments by Ms. Figone are somehow evidence  
7 that the City's retiree medical program created a contractual provision and/or a vested right. This  
8 argument is misplaced.

9 **Argument:** The City acknowledges that pension and health care benefits may,  
10 under proper circumstances and based on the analysis in *Retired Employees Association of Orange*  
11 *County v. County of Orange*, 52 Cal. 4<sup>th</sup> 711 (2011), be considered vested. But the Figone  
12 memorandum is irrelevant because Measure B did *not* change the City's retiree medical benefits.  
13 Measure B concerns contributions by employees toward retiree health care benefits. The City  
14 will prove that the various bargaining units and the City have previously agreed to the contribution  
15 set forth in Measure B, demonstrating that Measure B did not alter *any* vested rights. The  
16 comments by the City Manager in this March 2008 Memorandum add nothing to the issues and  
17 evidence that the Court must evaluate at this trial. The generic comment by Ms. Figone that health  
18 care benefits are vested has little if any relevance and must be excluded under Evidence Code  
19 section 352 as likely to consume an excessive amount of time with virtually no probative value.

20 **Motion in Limine No. 5:** The City moves to exclude evidence, testimony and  
21 argument about various collateral challenges relating to Measure B, including administrative  
22 actions pending before the Public Employment Relations Board ("PERB"), grievances and the  
23 SJPOA's *Quo Warranto* challenge.

24 **Facts:** In addition to this civil action, the plaintiffs have brought other legal  
25 challenges to Measure B. For example, the San Jose POA filed a request with the California  
26 Attorney General seeking permission to file a *Quo Warranto* action against the City of San Jose,  
27 and that request was granted. That action alleges that San Jose failed to meet and confer in good  
28

1 faith (under the Meyers-Milias Brown Act) before Measure B was placed on the ballot.

2 In addition to this challenge, various plaintiffs have filed unfair labor practice charges that  
3 are currently pending before the Public Employment Relations Board ("PERB"). The *Sapien*  
4 plaintiffs seek to introduce their PERB charge as Exhibit 19.

5 A chart showing other collateral charges is attached to the Hartinger Declaration as Exhibit  
6 6.

7 **Argument:** All discussion, references, argument, testimony, etc., about these  
8 collateral matters and must be excluded. The issues raised and which will be adjudicated in this  
9 action are completely separate from the other claims – which involve "bad faith bargaining"  
10 allegations under the Meyers-Milias-Brown Act. Further, because the collateral claims are being  
11 fully adjudicated in alternative fora, there is a risk of inconsistent rulings if the claims are litigated  
12 here.

13 Evidence regarding the collateral claims are irrelevant and should be excluded under  
14 Evidence Code section 350. Further, to the extent that the evidence is permitted, it would  
15 undoubtedly cause an enormous and undue consumption of time to rebut the claims. Given their  
16 lack of relevance to the Constitutional claims at issue here, all such evidence should be excluded  
17 under section 352 of the Evidence Code.

18 **Motion in Limine No. 6:** The City moves to preclude plaintiffs from proffering  
19 testimony in the cases where plaintiffs have been instructed not to answer basic questions about  
20 their claims.

21 **Facts:** Attached hereto as Exhibit 7 to the Hartinger Declaration are relevant  
22 excerpts from the depositions from named plaintiffs Robert Sapien, John Mukhar and Teresa  
23 Harris. As can be seen from the highlighted sections, these three plaintiffs refused to answer key  
24 questions regarding their claims including the most basic questions:

25 (1) Whether Measure B deprived the plaintiffs of any prior earned benefits  
26 (Harris Depo, pg. 42-43; Sapien Depo, pg. 42; Mukhar Depo pp. 61-63.)  
27  
28



- 1 (2) What rights of plaintiffs are allegedly impaired by Measure B (Harris  
2 Depo., pg. 45; Sapien Depo, pp. 43, 52-53)
- 3 (3) The impact of Measure B on unfunded liabilities (Harris Depo, pp. 47, 50)
- 4 (4) Any issues regarding the SRBR (Harris Depo, pp. 57-58)
- 5 (5) Whether employees can be required to make additional retirement  
6 contributions (Harris Depo, pp. 63-64)
- 7 (6) How and to what extent plaintiffs' contract rights are impacted by Measure  
8 B (Sapien Depo pp. 58-59)
- 9 (7) Whether and to what extent Measure B affects the 8:3 Normal Cost  
10 contribution relationship (Mukhar Depo at 64).

11 **Argument:** The refusal of these plaintiffs to answer deposition questions about  
12 essentially every critical issue involving their challenge to Measure B requires the Court to grant  
13 this motion in limine.<sup>5</sup> Plaintiffs cannot reasonably refuse to provide information requested in  
14 discovery and then be permitted to offer that very same type of evidence at trial.

15 There are two key decisions which demonstrate why the motion must be granted. *Thoren v*  
16 *Johnston & Washer*, 29 Cal.App.3d 270 (1972); *Deeter v. Angus*, 29 Cal. App. 3d 270 (1972).  
17 Those cases stand for the proposition that if information is requested in discovery and not  
18 provided, that information cannot be offered into evidence at trial. Notably, those cases provide  
19 that the party seeking exclusion does not need to move to compel production of the non-produced  
20 information. Those cases stand for the proposition of basic fairness. A party cannot use evidence  
21 at trial that is relevant and requested during discovery but which, for whatever reason was not  
22 produced.

23  
24  
25  
26 <sup>5</sup> While these three plaintiffs have not designated themselves to testify at trial, they are the lead  
27 plaintiffs in the *Sapien*, *Mukhar* and *Harris* cases. This intentional conduct in refusing to provide  
28 clearly relevant evidence during discovery prejudiced defendant's ability to prepare for trial.

1 As can be seen from the deposition excerpts, plaintiffs refused to answer key questions  
2 related to their claims by asserting that the questions were improper under the decision of *Rifkind*  
3 v. *Superior Court*, 22 Cal.App.4th 1255 (1994). In *Rifkind*, a deponent was not required to answer  
4 questions about legal contentions such as being asked to state all facts and list all witnesses and  
5 documents supporting the claims. Critically, these plaintiffs were not asked those type of  
6 contention questions, but instead were asked to explain the basis of their claims by very specific  
7 questioning. They were asked specific questions about the very specific issues that are raised in  
8 this lawsuit. (See Exhibit 7 to Hartinger Dec.) Those questions are proper and the refusal to  
9 answer is unsupportable.

10 Because these plaintiffs decided to “hide the ball” during discovery, there should not be  
11 any testimony permitted from the plaintiffs in *Sapien, Mukhar and Harris*. They cannot come to  
12 trial and offer testimony and evidence to which defendant has not been given a fair opportunity to  
13 defend against.

14 Plaintiffs do not yet have the deposition transcript from the deposition of Charles Allen,  
15 designated as the Person Most Knowledgeable (“PMK”) for AFSCME. Allen’s deposition was  
16 taken on June 24, and he was instructed not to answer on a variety of occasions. The Court’s  
17 order should extend to AFSCME as well. (Hartinger Decl., ¶9.)

18 **Motion in Limine No. 7:** The City moves to preclude plaintiffs from proffering  
19 testimony that constitutes legal conclusions or opinions – e.g., that Measure B “breaches a  
20 contract” or “violates vested rights,” etc.

21 **Facts:** Those plaintiff witnesses who have given full responses to deposition  
22 questioning have all testified that the Measure B provisions, if enacted, will “breach” various  
23 contracts that Plaintiffs allege exist between the City and the bargaining units. Some of the  
24 witnesses have also testified to their conclusions that the implementation of Measure B will result  
25 in the taking of property and/or the impairment of vested rights.

26 **Argument:** The Court must exclude this type of testimony where plaintiff  
27 witnesses attempt to testify to legal conclusions. These witnesses can only testify about the facts  
28

1 upon which they have personal knowledge. They cannot testify as to their legal opinions  
2 regarding the alleged existence of contracts and opine that the implementation of certain  
3 provisions of Measure B would breach those contracts or impinge vested rights. See *Jones v. P.S.*  
4 *Development Co., Inc.*, 166 Cal.App.4<sup>th</sup> 707, 720 (2008).

5 **Motion In Limine No. 8:** Numerous proposed trial exhibits designated by plaintiffs in  
6 the *Harris, Sapien* and *Mukhar* must be excluded due to lack of a sufficient evidentiary  
7 foundation.

8 **Facts:** Exhibits 13, 13, 14, 15, 16, 17 and 23 submitted by the *Sapien* Plaintiffs all  
9 constitute inadmissible hearsay and/or are irrelevant. The documents offered at Exhibits 13-17 are  
10 prior arbitration transcripts and prior arbitration filings, some going back 23 years to 1990.  
11 Exhibit 23 is a declaration signed by the *Sapien* attorney, Christopher Platten! (See Hartinger  
12 Decl., Exh. 10.)

13 **Argument:** These proposed exhibits are hearsay without an exception and must  
14 therefore be excluded under Evidence Code section 1200 et seq. The evidence is also irrelevant  
15 and unduly time consuming and should be excluded under Evidence Code Sections 350 and 352.  
16 With respect to Mr. Platten's own declaration, clearly there is no evidentiary basis to permit a  
17 party's attorney to offer his own declaration into evidence. All of these exhibits must be excluded  
18 at trial.

19 **Motion in Limine No. 9:** The CNN video clip of Councilmember Liccardo, proffered  
20 by the *Sapien* plaintiffs, should be excluded and all reference to that video clip excluded.

21 **Facts:** A CNN local news affiliate ran a report about Measure B and the potential  
22 impact of the measure on the San Jose work force. The report is being offered as Exhibit 21 by  
23 the *Sapien* plaintiffs. It should be excluded in its entirety, and specifically the brief statement from  
24 Councilmember Liccardo. The brief comment from Councilmember Liccardo is obviously a  
25 snippet from a larger discussion that he participated in with the reporter. (Hartinger Dec., ¶10.)

26 **Argument:** The news report is hearsay and includes self serving comments by Mr.  
27 Sapien and other City employees about how Measure B could affect them. The clip may be  
28

1 properly excluded on the grounds that it contains hearsay. Further, the news clip lacks foundation.

2 Councilmember Liccardo's statement is incomplete because the entire interview is not  
3 contained, and in any event, his opinion on the retirement system and the effect of Measure B is  
4 irrelevant.

5 The parties and the court will be placed on a slippery slope if hearsay news articles are  
6 admitted into evidence. In this case, an undue consumption of time would result because  
7 Councilmember Liccardo would have to testify on his version of events, and the City will  
8 subpoena the news station to obtain the entire footage, and not merely one edited snippet.

9 The views of a single elected official on the meaning of legislation are irrelevant and  
10 inadmissible. *See e.g., Carter v. California Dep't of Veterans Affairs*, 38 Cal.4th 914, 929 (2006)  
11 (legislator's personal understanding of the law is not evidence of the collective intent of the  
12 legislative body.) There is no basis to permit this news report into evidence.

13 **Motion in Limine No. 10:** Except for parties, all witnesses must be excluded until such  
14 witnesses have concluded their testimony.

15 **Argument:** Pursuant to California Evidence Code section 777, witnesses should be  
16 excluded (other than parties).

17 **Motion in Limine No. 11:** The City moves for an order regulating case presentations by  
18 equal time limitations.

19 **Argument:** There is no reason to have a drawn out trial with lengthy testimony in  
20 this case. The issues are predominantly legal, and will focus on the Court's interpretation and  
21 impact of Measure B on the existing provisions in the Charter, the City's Municipal Code and the  
22 various labor agreements. The Superior Court – just like a United States District Court – has the  
23 inherent authority to control and regulate the conduct of trial. *E.g., Cal. Ev. Code § 320.*

24 This is precisely the sort of case that calls out for a "time clock" trial. There are numerous  
25 parties with overlapping claims. A time limited trial will force all parties to streamline their  
26 presentations so they are fair and efficient.

1           The City assumes that the Court can receive up to 5 hours of testimony per day. The City  
2 recommends placing a limit of 24 hours for this trial, with 12 hours allocated to each side.  
3

4 DATED: June 27, 2013

Respectfully submitted,

MEYERS, NAVE, RIBACK, SILVER & WILSON

6  
7 By: 

Arthur A. Hartinger

Attorneys for Defendant and Cross-Complainant  
City of San Jose

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.

On June 27, 2013, I served true copies of the following documents described as **DEFENDANT CITY OF SAN JOSE'S MOTIONS IN LIMINE** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address kthomas@meyersnave.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 27, 2013, at Oakland, California.

  
Kathy Thomas

## SERVICE LIST

<p>John McBride Christopher E. Platten Mark S. Renner WYLIE, MCBRIDE, PLATTEN &amp; RENNER 2125 Canoas Garden Ave, Suite 120 San Jose, CA 95125 Telephone: 408-979-2920 Fax: 408-989-0932 E-Mail: jmcbride@wmpirlaw.com cplatten@wmpirlaw.com mrenner@wmpirlaw.com</p>	<p>Attorneys for Plaintiffs/Petitioners, ROBERT SAPIEN, MARY MCCARTHY, THANH HO, RANDY SEKANY AND KEN HEREDIA (Santa Clara Superior Court Case No. 112CV225928)</p> <p>AND</p> <p>Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON (Santa Clara Superior Court Case No. 112CV226574)</p> <p>AND</p> <p>Plaintiffs/Petitioners, TERESA HARRIS, JON REGER, MOSES SERRANO (Santa Clara Superior Court Case No. 112CV226570)</p>
<p>Gregg McLean Adam Jonathan Yank Gonzalo Martinez Jennifer Stoughton Amber L. West CARROLL, BURDICK &amp; MCDONOUGH, LLP 44 Montgomery Street, Suite 400 San Francisco, CA 94104 Telephone: 415-989-5900 Fax: 415-989-0932 E-Mail: gadam@cbmlaw.com jyank@cbmlaw.com gmartinez@cbmlaw.com jstoughton@cbmlaw.com awest@cbmlaw.com</p>	<p>Attorneys for Plaintiff, SAN JOSE POLICE OFFICERS' ASSOC. (Santa Clara Superior Court Case No. 112CV225926)</p>
<p>Teague P. Paterson Vishtap M. Soroushian BEESON, TAYER &amp; BODINE, APC Ross House, 2nd Floor 483 Ninth Street Oakland, CA 94607-4050 Telephone: 510-625-9700 Fax: 510-625-8275 E-Mail: tpaterson@beesontayer.com; vsoroushian@beesontayer.com;</p>	<p>Plaintiff, AFSCME LOCAL 101 (Santa Clara Superior Court Case No. 112CV227864)</p>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<p>Harvey L. Leiderman Jeffrey R. Rieger REED SMITH, LLP 101 Second Street, Suite 1800 San Francisco, CA 94105 Telephone: 415-659-5914 Fax: 415-391-8269 E-Mail: hleiderman@reedsmith.com; jreiger@reedsmith.com</p>	<p>Attorneys for Defendant, CITY OF SAN JOSE, BOARD OF ADMINISTRATION FOR POLICE AND FIRE DEPARTMENT RETIREMENT PLAN OF CITY OF SAN JOSE (Santa Clara Superior Court Case No. 112CV225926)</p> <p>AND</p> <p>Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1961 SAN JOSE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV225928)</p> <p>AND</p> <p>Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1975 FEDERATED CITY EMPLOYEES' RETIREMENT PLAN (Santa Clara Superior Court Case Nos. 112CV226570 and 112CV226574 )</p> <p>AND</p> <p>Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE FEDERATED CITY EMPLOYEES RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV227864)</p>
<p>Stephen H. Silver, Esq. Richard A. Levine, Esq. Jacob A. Kalinski, Esq. Silver, Hadden, Silver, Wexler &amp; Levine 1428 Second Street, Suite 200 P.O. Box 2161 Santa Monica, California 90401</p>	<p>Attorneys for Plaintiffs/Petitioners SAN JOSE RETIRED EMPLOYEES ASSOCIATION, HOWARD E. FLEMING, DONALD S. MACRAE, FRANCES J. OLSON, GARY J. RICHERT AND ROSALINDA NAVARRO (Santa Clara Superior Court Case No. 1-12-cv-233660)</p>

2100406.1